

## WETLANDS COUNCIL

### MINUTES

March 9, 2010

---

The Wetlands Council met on Tuesday, March 9, 2010 in room 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Carol Henderson, Chip Kimball, Dennis Lydon, Lawrence Morse, Seth Prescott, Russ St. Pierre, Thomas Sloan, and David Thompson

**Absentees:** Larry Ballin, Sharon Champagne, Paul Dionne, and Dari Sassan

Also present were: Amy Samson, Council Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:15 with introductions and a quorum present.

1. **Approval of Minutes**  
February minutes will be reviewed at the April meeting.
3. **Wetlands Bureau Report**  
Mary Ann Tilton, Wetlands Bureau

**Rulemaking:**

The Stream Crossing Rules were heard before JLCAR on March 5<sup>th</sup>. They are now going through the comments which included such things as cost, complexity, slope, thresholds, and waivers. After much discussion it was decided to have the interests represented by the Wetlands Council go to their respective groups and come to the next council meeting with issues and concerns expressed. It will be decided at that time whether a letter of support or concern will be written to the commissioner.

**Budget:**

Currently operating in the red.

**LEAN Initiative**

Coordinated processes in the bureau have been taking place to reduce government waste. The initiative includes enforcement, coordinated administrative process of application processing, and others.

Discussion on the MOA between DES, Fish & Game and DRED.

**4. Status of Appeals**

Amy Sampson, Appeals Clerk, reviewed the following:

**Appeals**

**Docket No. 09-07 WtC - Lake Sunapee Protective Association (LSPA)**

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse

Recused: Larry Ballin & Carol Henderson

Status: The Water Council held a PHC relative to the Alteration of Terrain Permit (which is also being appealed). The Water Council has scheduled a hearing for 10/13/10. It is preferred that a hearing in this matter be scheduled for 10/12/10, which will be easier for all parties as far as scheduling witnesses, etc.

**Docket No. 09-08 WtC - Town of Newbury**

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse

Recused: Larry Ballin & Carol Henderson

Status: The Water Council held a PHC relative to the Alteration of Terrain Permit (which is also being appealed). The Water Council has scheduled a hearing for 10/13/10. It is preferred that a hearing in this matter be scheduled for 10/12/10, which will be easier for all parties as far as scheduling witnesses, etc. PHC scheduled for 4/21/10 at 9:00 a.m.

October 12<sup>th</sup> the 2 appeals will be heard.

**Docket No.: 09-35 WtC – Town of Newbury**

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse

Status: The Water Council held a PHC relative to the Alteration of Terrain Permit (which is also being appealed). The Water Council has scheduled a hearing for 10/13/10. It is preferred that a hearing in this matter be scheduled for 10/12/10, which will be easier for all parties as far as scheduling witnesses, etc. On 2/4/10, Lake Sunapee Protective Association filed a Petition to Intervene and Petition to Appeal. Petition granted by PHC Officer Morse. PHC scheduled for 4/21/10 at 9:00 a.m.

Paul Goodwin- Comment about not receiving any information from the Wetlands Council.

**Docket No. 08-09 WtC - John Goode, et al.**

Subject: 1/15/08 Decision on Reconsideration, Wetlands File No. 2007-00933

Presiding Officer: Dennis Lydon

Status: Decision was issued on June 16, 2009 to grant the appeal. The matter was remanded to the Bureau for further proceedings consistent with the requirements of the Order. Motion for Reconsideration was filed on 7/16/09. On 9/22/09, Council denied the Motion for Reconsideration. A decision and order is being finalized by Chairman Kimball.

**I. New Appeals**

**Docket No. 10-02 WtC – Grappones Appeal**

March 9, 2010

Subject: 12/21/09 Ellakona Realty, LLC's Shoreline Impact Permit No. 2009-02802

Presiding Officer: David Thompson

PHC scheduled for 4/28/10 at 1 p.m.

- ***Councilor St. Pierre made a motion to accept the appeal, second by Councilor Thompson. Motion passed unanimously.***

**Docket No. 10-03 WtC – Richard and Donna Mills Appeal**

Subject: 1/5/10 Decision on Reconsideration, Wetlands File No. 2009-01534

Presiding Officer: Dennis Lydon

PHC scheduled for 4/5/10 at 9 a.m.

- ***Councilor Thompson made a motion to accept the appeal, second by Councilor Morse. Motion passed unanimously.***

**Docket No. 10-04 WtC – Thomas J. Murray Appeal**

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Larry Morse

PHC scheduled for 5/19/10 at 9 a.m.

- ***Councilor Morse made a motion to accept the appeal, second by Councilor Thompson. Motion passed unanimously.***

**Docket No. 10-05 WtC – William and Sue Conaty Appeal**

Subject: 1/5/10 Reconsideration Denial, Wetlands File No. 2009-00233

Presiding Officer: Chip Kimball

PHC scheduled for 4/28/10 at 9 a.m.

- ***Councilor Thompson made a motion to accept the appeal, second by Councilor St. Pierre. Motion passed unanimously.***

**4. Other Business –**

- a. The Governor's office is sending letters to the Marine Trades and Audobon/SPNF organizations asking them to nominate representatives.
- b. Chairman Kimball will try contacting Councilor Dionne and if no response received he will then get in contact with the NH Conservation Commission.
- c. Chairman Kimball will contact the Department of Safety and ask to have representatives designated that will be able to participate monthly.

**Legislation**

SB 480 – an act relative to appeals of decision by the Department of Environmental Services. The Wetlands Council is in support of this but there are others that are not. This will assign a hearings officer with the councils acting as the jury and making the decision. Chairman Kimball and Councilor Morse will speak in support.

The Supreme Court ruling in the Garrison Place Appeal was noted.

**Status of Appeals - Continued:**

March 9, 2010

Amy Sampson, Appeals Clerk, reviewed the following:

**II. Decisions that need to be written/finalized and issued.**

**Docket No.: 08-16 WtC - Jumanna Stark**

Subject: 10/19/07 Decision on Reconsideration, Wetlands File No. 2007-00473

Presiding Officer: Dennis Lydon

Action: A decision and order has been finalized and will be ready for the Council to review and approve at the 4/13/10 meeting.

**Docket No. 08-58 WtC - Mark & Kristen Begor**

Subject: 10/7/08 Decision on Reconsideration Denial, Wetlands File No. 2008-00271

Presiding Officer: David Thompson

Action: Decision is complete. The decision will be forwarded to the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 4/13/10 meeting.

**Docket No. 09-17 WtC - Joseph and Suzanne Labrecque**

Subject: 3/17/09 Request for Reconsideration, Wetlands File No. 2008-02086

Presiding Officer: Larry Morse

Action: Decision is complete. The decision will be forwarded to the presiding officer and the Council's attorney for final approval. Once approved, the decision will need to be reviewed and approved at the 4/13/10 meeting.

**Docket No. 10-01 WtC – Julie and Earle Jenkins**

Subject: 12/10/09 Decision on Reconsideration

Presiding Officer: Not Assigned

Recused: Chip Kimball

Status: Council did not accept the appeal at the 2/9/10 meeting. A written decision to be finalized by Councilor Ballin.

**III. Hearings or PHCs scheduled.**

**Docket No. 06-16 WtC - Shane Forest**

Subject: 10/3/06 Decision on Reconsideration Denial (AO WD 06-035), Wetlands File No. 1999-01294

Presiding Officer: Larry Morse

Status: PHC scheduled for 3/17/10 at 9:00 a.m.

**Docket No. 07-09 WtC - Derry Conservation Commission**

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott

Status: Assent to Motion for Continuance of Pre-Hearing Conference granted by PHC Officer Prescott. PHC scheduled for 5/3/10 at 2:30 p.m.

**Docket No. 08-04 WtC - Porter Trust**

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball

Status: PHC scheduled for 3/24/10 at 9:00 a.m. The parties are negotiating and requested that this PHC be postponed.

**Docket No. 08-13 WtC - Jeffrey Costura**

Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416

Presiding Officer: Dennis Lydon

March 9, 2010

Status: Request for Status is expected to be received by the next Council meeting on 4/13/10.

**Docket No. 08-55 WtC - Tracy Middleton Revocable Trust of 1992**

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Presiding Officer: David Thompson

Status: An Assented-to Motion to Continue the hearing was granted. The parties are negotiating settlement. Request for Status is expected to be received by the next Council meeting on 4/13/10.

**Docket No. 09-09 WtC - Christopher and Sally Norton**

Subject: 01/09/09 Reconsideration Denial, Wetlands File No. 2008-01265

Presiding Officer: Larry Morse

Status: PHC scheduled for 3/17/10 at 9:00 a.m.

**Docket No. 09-20 WtC - Dana Belletete**

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Presiding Officer: Dennis Lydon

Status: PHC scheduled for 3/24/10 at 1:00 p.m.

**Docket No. 09-21 WtC - John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Presiding Officer: Chip Kimball

Status: A third PHC is scheduled for 3/31/10 at 2:30 p.m. A hearing is scheduled for 4/13/10 at 10:00 a.m.

**Docket No. 09-22 WtC - John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Status: A second PHC is scheduled for 3/31/10 at 2:30 p.m. A hearing is scheduled for 4/13/10 at 10:00 a.m.

**Docket No. 9-25 WtC - Town of Hooksett**

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Larry Morse

Status: Originally scheduled for 3/17/10, the parties requested this date be rescheduled. PHC scheduled for 4/21/10 at 2:00 p.m.

**Docket No. 09-33 WtC – Norman and Patricia Bureau**

Subject: 11/4/08 Administrative Order No. 08-044 WD - Alteration of Terrain at 5 Christopher Road & 6 Steep St., in Merrimack

Presiding Officer: Larry Morse

Status: PHC scheduled for 3/17/10 at 1:00 p.m.

**Docket No. 09-30 WtC – Philips Exeter Academy**

Subject: 6/26/09 Decision on Reconsideration for Proposed Parking Area at Main Street School in Exeter. Wetlands Bureau Dredge and Fill Permit #2008-00233

Presiding Officer: Dennis Lydon

Status: PHC scheduled for 3/24/10 at 1:00 p.m.

**Docket No. 09-31 WtC – Donald Prudhomme**

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412

Presiding Officer: Larry Ballin

Status: Council accepted the appeal on 2/9/10. A pre-hearing conference is scheduled for 4/28/10 at 11 a.m.

**Docket No. 09-32 WtC – Patricia Prudhomme**

Subject: 8/7/09 Application Denial, Wetlands File No. 2009-01412  
Presiding Officer: Larry Ballin  
Status: Council accepted the appeal on 2/9/10. A pre-hearing conference is scheduled for 4/28/10 at 11 a.m.

**Docket No. 09-36 WtC – Brendan and Dana Keegan**

Subject: Administrative Order No. 09-22 WD dated April 6, 2009  
Presiding Officer: David Thompson  
Status: Council accepted the appeal on 2/9/10. A pre-hearing conference is scheduled for 4/28/10 at 1 p.m.

**Docket No. 09-44 WtC – Thomas and Joan DiPace**

Subject: 10/13/09 Administrative Order No. 09-082 WD  
Presiding Officer: Chip Kimball  
Status: Council accepted the appeal on 2/9/10. A pre-hearing conference is scheduled for 4/28/10 at 9 a.m.

**Docket No. 09-37 WtC – Ossipee Bluffs Association**

Subject: 10/22/09 Decision on Reconsideration, Wetlands File No. 200-02822  
Presiding Officer: Larry Morse  
Status: PHC scheduled for 4/21/10 at 2:00 p.m.

**IV. Previously pending cases.**

**Docket No. 06-11 WtC - Dennis Proulx**

Subject: 07/13/06 Decision on Reconsideration Denial, Wetlands File No. 2006-00769  
Presiding Officer: Larry Morse  
Status: Assented-To Motion to Stay was granted at the last Council meeting.

**Docket No. 08-01 WtC - Town of Newington Conservation Commission**

Subject: 12/03/07 Declining to terminate the processing of Alteration of Terrain permit application for property within the boundaries of the Pease Development Authority. Wetlands File No. 2007-0829-01  
Presiding Officer: Kimball  
Recused: Larry Morse  
Status: On 11/24/09, a Motion to Dismiss or, in the Alternative, to Deny the Appeal was filed by Atty. Turner. On 11/25/09, an Assented-To Motion to Enlarge Time Allowed to Respond to Motion to Dismiss was filed by Atty. Callen. On 12/3/09, an Objection to PDA's Motion to Dismiss was filed by Atty. Callen. Motion to Dismiss was voted on February 9, 2010 and Decision has been written and is being reviewed by counsel.

**Docket No.: 08-03 WtC - David Johnson – Johngis Realty LLC**

Subject: 12/04/07 Decision on Reconsideration, Wetlands File No. 2006-00700  
Presiding Officer: Dennis Lydon  
Status: Request for Status is expected to be received by the next Council meeting on 4/13/10.

**Docket No. 08-35 WtC (formerly Docket No. 08-19 WC) - Frank Faticanti**

Subject: Waiver Application Pursuant to RSA 483-B  
Presiding Officer: Chip Kimball  
Status: Request for Status is expected to be received by the next Council meeting on 4/13/10.

**Docket No. 08-53 WtC - Vintage Trust c/o Enthusiasts, Inc.**

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506  
Presiding Officer: Dennis Lydon  
Status: Request for Status is expected to be received by the next Council meeting on 4/13/10.

**Docket No. 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina**

Subject: 12/9/08 Administrative Order  
Presiding Officer: Larry Morse  
Status: On 2/19/10, Atty. Callen filed a Motion to Amend to Intervene to Add Named Party. Motion to Amend to Intervene to Add Named Party granted by PHC Officer Morse. PHC to be 5/19/10 at 9 a.m.

**Docket No. 09-13 WtC - Dillon Investments, LLC**

Subject: Administrative Order No. 09-004  
Presiding Officer: Dave Thompson  
Status: The appeal has been withdrawn.

**V. Misc.**

**3/31/09 Request for Declaratory Ruling filed by Mr. Goodwin**

Mr. Goodwin sent an e-mail to the clerk on 12/8/09 requesting status. Councilor Morse will write this.

**5. Old Business -**

**6 Next Meeting** – Next meeting will be April 13, 2010

**7. Adjournment**

- ***Councilor Morse made a motion to adjourn, second by Councilor Thompson. Motion passed unanimously.***

Meeting adjourned at 11:20 A.M.